IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

RSA No. 440 of 2007

Date of Decision: 25th September, 2007

Gian Wati		Appellant
	Versus	
Union Bank of India		Respondent

Coram

The Hon'ble Mr. Justice Sanjay Karol,J.

Whether approved for reporting[1]? No.

For the appellant: Mr.P.C.Sharma, Advocate.

For the respondent:

Sanjay Karol, J. (Oral)

The present appeal arises out of the judgment and decree dated 2nd June, 2007 passed by District Judge, Kinnaur, H.P. upholding the judgment and decree dated 6th June, 2005 passed by Civil Judge, Kinnaur, decreeing the suit of the plaintiff-Union Bank of India for recovery of a sum of Rs.1,23,818/-.

Plaintiff-Union Bank of India filed a summary suit under Order 37 of the Code of Civil Procedure for recovery of a sum of Rs.1,23,818/- along with interest. The suit was tried as an ordinary suit by the trial Court, who framed the following issues:-

1) Whether the plaintiff is entitled to recover the amount of Rs.1,23,818/- along with interest as prayed for, from the defendant? OPP
2) Whether the suit is not maintainable in the present form? OPD

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[1] Whether the reporters of Local Papers are allowed to see the Judgment?

3) Whether the plaintiff has no cause of action? OPD

4) Whether the suit of the plaintiff is defective as alleged, if so, its effect? OPD

5) Relief.

After full trial and upon consideration of the material on record, the suit was decreed on 6.6.2005. The appellant-defendant filed an appeal, which was also considered on merits and dismissed. Thus, there are concurrent finding of fact recorded by the Courts below.

Feeling aggrieved against the said judgment and decree, the appellant has filed the present appeal primarily on the ground that suit filed by the Union Bank of India under Order 37, CPC could not have been tried as an ordinary suit. The first Appellate Court, after hearing the parties and examining the material on record has rightly rejected the contentions as are now sought to be made by the appellant for the reason that no prejudice has been caused to the appellant. Further the point was not raised before the trial Court nor was any issue framed.

In this view of the matter, no substantial question of law, in my view, arises for consideration in the present appeal. I find no infirmity or perversity in the impugned judgments and decrees and the appeal is accordingly dismissed in limine.

25th September, 2007 (Sanjay Karol),
(C) Judge.